

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATHAN CAMPOS,

Plaintiff,

v.

BIG FISH GAMES, INC., a Washington
corporation; et al.,

Defendants.

No. 2:22-cv-01806-RSM

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file

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1 confidential information under seal.

2 2. DEFINITIONS

3 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.2 “CONFIDENTIAL” Information: includes but is not limited to the following
6 documents and tangible things produced or otherwise exchanged: (1) sensitive and/or non-public
7 contractual terms with customers, vendors, advertising platforms, and other parties; (2) sensitive
8 pricing, financial, and/or profit information; (3) sensitive information regarding suppliers and
9 supplier lists; (4) sensitive information regarding customers, customer lists, customer usage, and
10 customer technical requirements; (5) sensitive product development information and information
11 relating to new products; (6) sensitive development processes, designs, drawings, engineering, and
12 hardware and software configuration information; (7) sensitive marketing plans, business plans,
13 forecasts, and business strategies; (8) sensitive communications and information relating to
14 products and services, including, but not limited to, advertising data, which in the hands of
15 competitors would be valuable; (9) customer feedback regarding products that have not been
16 publicly disclosed; (10) protected personal information (including contact information) and other
17 information subject to privacy laws; (11) sensitive internal financial reporting; and (12) other non-
18 public business information that is treated confidentially by the producing party in the ordinary
19 course of business, the disclosure of which may cause the producing party to be commercially
20 disadvantaged or prejudiced.

21 2.3 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
22 support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or items that it
24 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among other things,

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel or any other outside counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 2.9 Outside Counsel: attorneys who are not employees of a party to this action but are
11 affiliated with a law firm that has been retained to represent or advise a party to this action.

12 2.10 Party: any party to this action, including all of its officers, directors, employees,
13 consultants, retained experts, and Outside Counsel (and their support staffs).

14 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
15 Material in this action.

16 2.12 Professional Vendors: persons or entities that provide litigation support services
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
18 organizing, storing, or retrieving data in any form or medium) and their employees and
19 subcontractors.

20 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
21 “CONFIDENTIAL.”

22 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 3. SCOPE

25 The protections conferred by this agreement cover not only Protected Material (as defined
26 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,

1 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
2 or presentations by Parties or their counsel that might reveal Protected Material.

3 However, the protections conferred by this agreement do not cover information that is in
4 the public domain or becomes part of the public domain through trial or otherwise.

5 4. ACCESS TO AND USE OF PROTECTED MATERIAL

6 4.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
7 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Protected Material may be disclosed only to the
9 categories of persons and under the conditions described in this agreement. Protected Material
10 must be stored and maintained by a Receiving Party at a location and in a secure manner that
11 ensures that access is limited to the persons authorized under this Order.

12 4.2.1 Disclosure of “CONFIDENTIAL” Information. Unless otherwise ordered by the
13 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 “CONFIDENTIAL” Information only to:

15 (a) Outside Counsel, as well as employees of Outside Counsel to whom it is
16 reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 Receiving Party to whom disclosure is reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
20 designated;

21 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
22 necessary for this litigation, (2) who have provided a signed copy of the “Acknowledgment and
23 Agreement to Be Bound” (Exhibit A) to all Parties, and (3) as to whom the procedures set forth in
24 paragraph 4.4, below, have been followed;

25 (d) the court, court personnel, and court reporters and their staff;

26 (e) professional jury or trial consultants, mock jurors, and Professional Vendors

1 to whom disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (f) copy or imaging services retained by counsel to assist in the duplication of
4 Protected Material, provided that counsel for the Party retaining the copy or imaging service
5 instructs the service not to disclose any Protected Material to third parties and to immediately
6 return all originals and copies of any Protected Material;

7 (g) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
9 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
10 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
11 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
12 under this agreement;

13 (h) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 4.3 Filing Protected Material. Before filing any Protected Material or discussing or
16 referencing such Material in court filings, the filing Party shall confer with the Designating Party,
17 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the Designating Party will
18 remove the confidential designation, whether the document can be redacted, or whether a motion
19 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
20 Designating Party must identify the basis for sealing the specific Protected Material at issue, and
21 the filing Party shall include this basis in its motion to seal, along with any objection to sealing the
22 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
23 standards that will be applied when a Party seeks permission from the court to file material under
24 seal. A Party who seeks to maintain the confidentiality of its information must satisfy the
25 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the Party filing the motion to seal.
26 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with

1 the strong presumption of public access to the Court's files.

2 4.4 Procedures for Approving or Objecting to Disclosure of "CONFIDENTIAL"
3 Information to Experts. Unless otherwise ordered by the Court or agreed to in writing by the
4 Designating Party, a Receiving Party that seeks to disclose to an Expert any information that has
5 been designated "CONFIDENTIAL" pursuant to paragraph 4.2.1(c) first must make a written
6 request to the Designating Party that (1) identifies the general categories of Protected Material that
7 the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the
8 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's
9 current resume, (4) identifies the Expert's current employer(s), and (5) identifies (by name and
10 number of the case, filing date, and location of court) any litigation in connection with which the
11 Expert has offered expert testimony, including through a declaration, report, or testimony at a
12 deposition or trial, during the preceding four years.

13 The Receiving Party may disclose the subject Protected Material to the identified Expert
14 unless, within 14 days of delivering the request, the Receiving Party receives a written objection
15 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
16 based. If a timely written objection is made, the Parties must meet and confer to try to resolve the
17 matter by agreement within 7 days of the written objection. If no agreement is reached, the
18 Receiving Party may seek permission from the Court to disclose the subject Protected Material to
19 the identified Expert. In any such proceeding, the Party opposing disclosure shall bear the burden
20 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
21 outweighs the Receiving Party's need to disclose the Protected Material.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
24 or Non-Party that designates information or items for protection under this Order must take care
25 to limit any such designation to specific material that qualifies under the appropriate standards.
26 The Designating Party must designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify, so that other portions of the material,
2 documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
6 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
7 and burdens on other parties) expose the Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it designated
9 for protection do not qualify for protection, the Designating Party must promptly notify all other
10 Parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
13 ordered, disclosure or discovery material that qualifies for protection under this agreement must
14 be clearly so designated before or when the material is disclosed or produced.

15 (a) Information in documentary form (*e.g.*, paper or electronic documents and
16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings):
17 The Designating Party must affix the word "CONFIDENTIAL" to each page that contains
18 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
19 the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
20 markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings: The Parties
22 and any participating Non-Parties must identify on the record, during the deposition or other
23 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
24 testimony after reviewing the transcript. Any Party or Non-Party may, within 21 days after
25 receiving the final transcript of the deposition or other pretrial proceeding, designate portions of
26 the transcript, or exhibits thereto, as "CONFIDENTIAL,"

1 If a Party or Non-Party desires to protect “CONFIDENTIAL” Information at trial, the issue
2 should be addressed during the pre-trial conference.

3 (c) Other tangible items: The Producing Party must affix in a prominent place
4 on the exterior of the container or containers in which the information or item is stored the word
5 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
6 the Producing Party, to the extent practicable, shall identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the Designating Party’s
9 right to secure protection under this Order for such material. Upon timely correction of a
10 designation, the Receiving Party must make reasonable efforts to ensure that the material is treated
11 in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
16 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
20 regarding confidential designations without court involvement. Any motion regarding confidential
21 designations or for a protective order must include a certification, in the motion or in a declaration
22 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
23 affected parties in an effort to resolve the dispute without court action. The certification must list
24 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
25 to-face meeting or a telephone conference.

26 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court

intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” that Party must:

(a) promptly notify the Designating Party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

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2 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
3 MATERIAL

4 When a Producing Party gives notice to Receiving Parties that certain inadvertently
5 produced material is subject to a claim of privilege or other protection, the obligations of the
6 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
7 is not intended to modify whatever procedure may be established in an e-discovery order or
8 agreement that provides for production without prior privilege review. The Parties agree to the
9 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10 10. NON TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of this action, including all appeals, each Receiving
12 Party must return all Protected Material to the Producing Party, including all copies, extracts and
13 summaries thereof. Alternatively, the Parties may agree upon appropriate methods of destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
17 product, even if such materials contain Protected Material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a
19 Designating Party agrees otherwise in writing or a court orders otherwise.
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: June 8, 2023

/s/ Andrew Ryan

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the Producing Party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

DATED this 12th day of June, 2023.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of _____ [insert formal name of the case and the number and initials assigned to
it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____